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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,637	12/28/2004	Rodney W. Tyler	1030-018	9141
7590 Michael N Haynes 1341 Huntersfield Close Keswick, VA 22947			EXAMINER SAFAVI, MICHAEL	
			ART UNIT 3637	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,637	<b>Applicant(s)</b> TYLER, RODNEY W.	
	<b>Examiner</b> M. Safavi	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-199 is/are pending in the application.
- 4a) Of the above claim(s) 121 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-120, 122-175 and 199 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

With regard to Applicant's argument in section (I) of the remarks bridging pages 22 and 23 of the response, Applicant appears to state the same reasoning for traversal of the restriction between species of a hose within the mesh and the species of a hose adjacent, (external), the mesh. As such, the examiner repeats remarks within the Office action of February 27, 2007 namely; the feature of "a second tubular mesh enclosure attached to said first tubular mesh enclosure" does not form a special technical feature of the listed species. For example, an irrigation hose adjacent a tubular mesh enclosure does not read upon an embodiment of an irrigation hose within a tubular mesh enclosure. Placement of the irrigation hose forms a special technical feature of the claimed species of the invention.

Claim 121 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species of the invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 29, 2006.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first tubular mesh enclosure placed perpendicular to a third tubular mesh enclosure while having at least one of the opposing ends thereof adjacent an end of the third tubular mesh enclosure,

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(**claim 164**), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Terminal Disclaimer***

The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

***Claim Rejections - 35 USC § 112***

Claims 162 and 164 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 162, it is not clear as to how "the first tubular mesh enclosure is placed such that said opposing pair of ends are adjacent each other" when a second tubular mesh enclosure is attached to the first tubular mesh enclosure.

Claim 164, it is not clear as to what is being defined by the language of claim 164. The specification does not appear clear and complete as to how the first tubular mesh enclosure is placed perpendicular to a third tubular mesh enclosure while having at least one of the opposing ends thereof adjacent an end of the third tubular mesh enclosure.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 120 is rejected under 35 U.S.C. 102(b) as being anticipated by Houck**

**et al. '123.** Houck et al. '123 discloses, Fig. 2, a first tubular mesh enclosure 20 formed from a mesh material 22; a filling 21 surrounded by said first tubular mesh enclosure; a second tubular mesh enclosure 20 attached to said first tubular mesh enclosure; and an irrigation hose 10 surrounded by said filling.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claim 119 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-84 of U.S. Patent No. 7,226,240 in view of Houck et al. '123.** The invention defined by claims 1-84, (particularly claim 1), of U.S. Patent No. 7,226,240 possesses the elements and features of instant claim 119 with the exception of "an irrigation hose surrounded by said filling". However, Houck et al. teaches application of an irrigation hose surrounded by a filling within a mesh enclosure. Therefore, to have provided the invention of claims 1-84 of U.S. Patent No. 7,226,240 with an irrigation hose surrounded by a filling within a mesh enclosure, thus allowing for a more streamline irrigation or drainage, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Houck et al. '123.

**Claims 1-118, 122-175, and 199 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-86 U.S. Patent No. 7,226,240.** Although the conflicting claims are not identical, they are not patentably distinct from each other because: as to instant claim 1, it would have been obvious to one having ordinary skill in the art to consider a "first major diameter" as a "first major width" as well as consider a "generally oval cross-section" as a "generally non-circular longitudinal cross-section". As to instant claim 122, it would have been obvious to one having ordinary skill in the art to consider a "first major diameter" as a "major width" as well as consider a "generally oval cross-section" as a "longitudinal cross-section". As to instant claims 123 and 124, it would have been obvious to one

having ordinary skill in the art to provide the mesh enclosure of claims 85 and 86 in U.S. Patent No. 7,226,240 to or in any area including a predetermined area as "predetermined area" would serve to read upon any area including that area within which the mesh enclosure is formed. As to instant claims 174 and 175, it would have been obvious to one having ordinary skill in the art to provide the first recited mesh tube mesh of claims 85 and 86 in U.S. Patent No. 7,226,240 as a "first tubular mesh enclosure".

### ***Response to Arguments***

Applicant's arguments filed June 25, 2007 have been fully considered but they are not persuasive. The reference to Houck et al. '123 has been made of record as by having been cited by Applicant within the Information Disclosure Statement (Form PTO-1449), submitted October 24, 2006. See for example, seventh listed reference under Published U.S. Patent Documents, (acknowledged by the examiner as having been considered), on page 1 of the IDS citing U.S. Patent No. 5,015,123 with a date of publication as 14 May 1991. U.S. Patent No. 5,015,123 was issued to Houck et al on May 14, 1991.

The examiner can only guess that Applicant is expressing apparent confusion with the referenced Houck et al. '123 patent as a result of Applicant having mistakenly excluded the 'c' in the typed name of Patentee as well as the abbreviated adjunct "et al.". Applicant certainly, realizes that U.S. Patent No. 5,015,123 has been issued to Houck et al. on May 14 1991 with Applicant having cited the Houck et al. reference



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upon the IDS of October 24, 2006. The Houck et al. '123 patent was indeed considered during prosecution of the parent application 10/208,631 and is cited on the face of the resulting U.S. Patent 7,226,240 as Houck et al. See the IDS of September 27, 2004 submitted within the parent application 10/208,631 listing U.S. Patent No. 5,015,123 to Houck et al. with a date of publication as 14 May 1991.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

This application contains claim 121 drawn to an invention nonelected with traverse in the reply filed on November 29, 2006. A complete reply to the final rejection

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must include cancellation of nonelected claims or other appropriate action (37

CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046.

The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**MICHAEL SAFAVI  
PRIMARY EXAMINER  
ART UNIT 354**

M. Safavi  
September 10, 2007